

House File 2340 - Introduced

HOUSE FILE 2340

BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 633)

A BILL FOR

1 An Act relating to public safety nuisances concerning licensed
2 premises where alcoholic beverages, wine, or beer is sold or
3 consumed.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 123.56 Public safety nuisances —
2 procedure.

3 1. A public safety nuisance exists at a licensed premises
4 for purposes of this section when it is established by clear
5 and convincing evidence that an owner, manager, employee,
6 contemporaneous patron or guest of the licensed premises
7 commits any of the following acts on the premises, on any
8 property contiguous to the premises, or within five hundred
9 feet of the premises:

10 a. Unlawfully discharges a firearm or uses an offensive
11 weapon, as defined in section 724.1, regardless of whether it
12 inflicts injury or death.

13 b. Assaults another person with a dangerous weapon as
14 defined in section 702.7 resulting in injury or death.

15 c. Engages in a riot as defined in section 723.1 on at
16 least three separate days within any twelve-month period in
17 which a peace officer responded for purposes of dispersing the
18 participants in the riot. A person who willingly joins in or
19 remains a part of a riot need not be the same person for each
20 riot incident.

21 2. If the county attorney or city attorney where the
22 licensed premises is located has reason to believe a public
23 safety nuisance that constitutes a serious threat to the
24 public safety exists, the county attorney or city attorney, or
25 attorney acting at the direction of the county attorney or city
26 attorney, may file a suit in equity in district court without
27 bond seeking abatement of a public safety nuisance arising
28 from a premises licensed under this chapter pursuant to the
29 requirements of this section.

30 3. In an action seeking abatement of a public safety
31 nuisance as provided in this section, evidence of other
32 current violations of this chapter may be received by the
33 court and considered in determining the remedial provisions
34 of any abatement order. In addition, evidence of prior
35 sanctions, violations of law, nuisance behavior, or general

1 reputation relating to the licensed premises may be admissible
2 in determining the reasonableness of remedial provisions of an
3 abatement order. However, evidence of a prior conviction of
4 the licensee, managers, employees, or contemporaneous patrons
5 and guests is not necessary for purposes of considering or
6 issuing an abatement order under this section. In an action
7 under this section, the administrator may submit to the court
8 a report as evidence on behalf of the division regarding
9 the compliance history of the licensee or permittee for
10 consideration by the court.

11 4. If the district court finds that a public safety nuisance
12 exists, the court may enter judgment declaring the existence
13 of the nuisance and order such remedial action as the court
14 determines reasonable to abate the nuisance. The abatement
15 order may take the form of an injunction. The duration of an
16 abatement order may be up to two years. Remedial action may
17 include but is not limited to temporary closure of the licensed
18 premises, revocation of the license for such period of time as
19 is consistent with section 123.40, required change in business
20 practice or operations, or posting of a bond. If a bond is
21 ordered and posted, the bond shall be subject to forfeiture,
22 in whole or in part, for any further actions contrary to the
23 abatement order.

24 5. For purposes of this section, "*licensed premises*" does
25 not include a licensed premises that is a food establishment
26 at the same location. For purposes of this subsection, "*food*
27 *establishment*" means an establishment where the establishment's
28 primary business is to sell food for consumption on the
29 premises, generally to persons seated within an enclosed
30 building which includes kitchen facilities for the preparation
31 and service of that food, but may include food sold for takeout
32 or delivery, and where at least half of the establishment's
33 gross income is derived from the sale of prepared food and
34 food-related services.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill establishes the requirements for establishing and
4 abating a public safety nuisance under Code chapter 123.

5 New Code section 123.56 provides that a public safety
6 nuisance exists when it is established by clear and convincing
7 evidence that an owner, manager, employee, contemporaneous
8 patron, or guest of the licensed premises unlawfully discharges
9 a firearm or uses an offensive weapon, assaults another person
10 with a dangerous weapon, or engages in a riot on at least three
11 separate days within any 12-month period, on the premises, on
12 any property contiguous to the premises, or within 500 feet of
13 the premises.

14 The bill provides that if the county attorney or city
15 attorney where the licensed premises is located believes a
16 public safety nuisance exists, the county attorney or city
17 attorney, or attorney acting at the direction of the county
18 attorney or city attorney, may file a suit in equity in
19 district court without bond seeking abatement of the public
20 safety nuisance. The bill then describes evidence that may
21 be considered in an action seeking abatement of the public
22 safety nuisance. The bill provides that if the district court
23 finds that a public safety nuisance exists, the court may enter
24 judgment declaring the existence of the nuisance and order such
25 remedial action as the court determines reasonable to abate
26 the nuisance. The bill describes appropriate remedial action
27 that may be taken by the district court. Finally, the bill
28 excludes from the provisions of the bill a licensed premises
29 that is also a food establishment where at least half of the
30 establishment's gross income is derived from food-related
31 sales.